



## ERGO

*Analysing developments impacting business*

### TAKING A LOOK AT KARNATAKA'S LATEST NOTIFICATION ON 24X7 OPERATION OF ESTABLISHMENTS

4 January 2021

By way of a notification dated 2 January 2021 (Notification), the Labour Department, Government of Karnataka, has permitted all shops and commercial establishments employing 10 or more persons to remain open for all days of the week throughout the year for a period of 3 years from the date of publication of the Notification in the Official Gazette\*. The move comes after the state government's imposition of night curfew in view of the spread of the new variant of SARS-CoV-2 and its subsequent [withdrawal](#) in the wake of widespread criticism.

It may be noted that the notification is not exactly a new development. Through its Official Gazette issued on 14 November 2019, the state government had come up with a similar [notification](#) (Previous Notification) allowing shops and commercial establishments employing 10 or more persons to operate on a 24x7 basis for a period of 3 years with effect from 14 November 2019, subject to compliance with certain conditions.

#### [Important Provisions of the Notification](#)

Like the Previous Notification, the Notification makes the facility of 24x7 operation of establishments subject to certain conditions. These conditions are similar to the ones set out in the Previous Notification with only a few variations. We discuss and analyse these conditions below.

1. [Additional staff](#): The Notification requires employers to appoint additional staff in a manner that every employee can take a day off every week on a rotational basis. The employer is also required to display the details of every employee at a conspicuous place in the shop / commercial establishment (including details of the employees who are on leave). The requirement of having adequate staff flows from Section 12(2) of the Karnataka Shops and Commercial Establishments Act, 1961 (Karnataka S&E Act), which requires the state government to ensure, while allowing 24x7 operations, that the establishment employs additional staff for meeting the requirement of one-day off for each employee.
2. [Payment of wages](#): The Notification requires employers to credit the wages (as well as overtime pay) payable to the employees to their savings account in accordance with the Payment of Wages Act, 1936.

3. Working hours: The working hours of any employee must not exceed 8 hours in any day and 48 hours in any week. Further, the period of work including overtime must not exceed 10 hours in any day (as opposed to 10½ hours per day as set out in the Previous Notification) and 50 hours in a continuous period of 3 months (as opposed to 57 hours per week as set out in the Previous Notification).

The latter part is likely to cause confusion since a period of work equal to 50 hours in 3 months would essentially contradict the provisions of Karnataka S&E Act as well as the Notification itself considering that an employer may require an employee to work up to 48 hours every week. This appears to be a drafting error as a similar period of 50 hours in 3 months is also provided in Karnataka S&E Act as the total overtime period (not the total period of work), and a clarification in this regard should be expected from the state government.

4. Employment of women employees in night shifts: The Notification provides that women employees should not be allowed to work beyond 8 PM in normal circumstances, although they may be so engaged upon their written consent and subject to adequate arrangements for their safety and dignity.
5. Arrangements for women employees: For women employees employed in shifts, the employer must, as per the Notification, provide transportation facility, and a notice to this effect must be exhibited at the main entrance of the establishment. The Notification also mandates setting up of an internal committee in accordance with Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
6. General arrangements for employees: Employees must be provided with facilities such as restroom, washroom, safety lockers, among other basic amenities.

It may be noted that the Notification has been issued in exercise of the powers of the state government under the Karnataka S&E Act. The Notification may, therefore, not be relevant as regards persons occupying positions of management or those engaged in preparatory or complementary work, who have been kept out of the purview of the Karnataka S&E Act.

### Comments

The flexibility to operate round the clock may be perceived as a move that may help employers tide over the mounting financial difficulties that arose against the backdrop of COVID-19-induced shutdown.

That said, it would have been better if the state government had taken note of the fact that the employees in several establishments are still working from home (and may even continue to do so going forward). An appropriate modification of or exemption from certain conditions set out in the Notification, including the requirement of display of notices (which could have been substituted with an electronic dissemination of notice among employees), would have helped in expressly recognizing the new normal, as has been done recently by the Central Government in the draft standing orders for the service sector released by it under the Industrial Relations Code, 2020.

Further, it is expected that the state government would provide clarity as regards the seemingly confusing requirement of ensuring a period of work of up to 50 hours in a continuous period of 3 months, as discussed above.

# ERGO | TAKING A LOOK AT KARNATAKA'S LATEST NOTIFICATION ON 24X7 OPERATION OF ESTABLISHMENTS

*\*The official e-gazette website of the state government had not displayed the Notification until the time this update was prepared.*

- Anshul Prakash (Partner) and Deeksha Malik (Associate)

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

*We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).*

**For private circulation only**

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2021 Khaitan & Co. All rights reserved.

**Mumbai**

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

**New Delhi**

Ashoka Estate, 12th Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

**Bengaluru**

Simal, 2nd Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

**Kolkata**

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)